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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 RICHARD JAMES WELK,  
12  
13 vs. Plaintiff,  
14 MATTHEW CATE,  
Defendant.

CASE NO. 12cv2943-LAB (WVG)  
**ORDER DENYING CERTIFICATE  
OF APPEALABILITY**

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16 On January 22, 2014, the Court denied Petitioner Richard Welk's petition for writ of  
17 habeas corpus. Welk's sole claim was that the evidence presented at his murder trial was  
18 insufficient to show the killing was premeditated and deliberate.

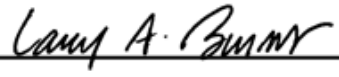
19 As discussed in the order denying the petition, the evidence was sufficient to meet  
20 the lenient standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Applying the  
21 required "additional layer of deference," see *Juan H. v. Allen*, 408 F.3d 1262, 1275 (9<sup>th</sup> Cir.  
22 2005), Welk's claim is even less tenable. As a last-ditch effort, Welk also attempted to argue  
23 a self-defense claim, which he had never presented to the state supreme court, and which  
24 therefore was unexhausted. Even if it were exhausted, the sufficiency standard was far from  
25 being met here.

26 No evidentiary hearing was required, because the Court's review was limited to the  
27 record before the state courts, see *Cullen v. Pinholster*, 131 S.Ct. 1388, 1399 (2011), and  
28 that record refuted Welk's claims. See *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007).

1 The standard for issuance of a certificate of appealability, see *Miller-El v. Cockrell*,  
2 537 U.S. 322, 327 (2003), is not met here. The certificate of appealability is therefore  
3 **DENIED.**

4 **IT IS SO ORDERED.**

5 DATED: February 11, 2014

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7 **HONORABLE LARRY ALAN BURNS**  
8 United States District Judge  
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